

Janet Lindner Spielberg (SBN 221926)  
**LAW OFFICES OF JANET LINDNER  
SPIELBERG**

12400 Wilshire Boulevard, #400  
Los Angeles, California 90025  
Tel: (310) 392-8801  
Fax: (310) 278-5938  
Email: [jlspielberg@jlslp.com](mailto:jlspielberg@jlslp.com)

Michael D. Braun (SBN 167416)  
**BRAUN LAW GROUP, P.C.**  
10680 West Pico Boulevard, Suite 280  
Los Angeles, California 90064  
Tel: (310) 836-6000  
Fax: (310) 836-6010  
Email: [service@braunlawgroup.com](mailto:service@braunlawgroup.com)

**ATTORNEYS FOR PLAINTIFF**

Joseph N. Kravec, Jr. (*pro hac* to be filed)  
Maureen Davidson-Welling (*pro hac* to be filed)  
Wyatt A. Lison (*pro hac* to be filed)

**STEMBER FEINSTEIN DOYLE  
& PAYNE LLC**

Allegheny Building, 17th Floor  
429 Forbes Avenue  
Pittsburgh, PA 15219  
Tel: (412) 281-8400  
Fax: (412) 281-1007  
Email: [jkravec@stemberfeinstein.com](mailto:jkravec@stemberfeinstein.com)  
Email: [mdavidsonwelling@stemberfeinstein.com](mailto:mdavidsonwelling@stemberfeinstein.com)  
Email: [wlison@stemberfeinstein.com](mailto:wlison@stemberfeinstein.com)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

**KIMBERLY S. SETHAVANISH, a  
California resident on behalf of herself and  
all others similarly situated,**

**Plaintiff,**

**v.**

**BALANCE BAR COMPANY, a Delaware  
corporation,**

**Defendant.**

**CASE NO.: 4:11-cv-04547-PJH**

**CLASS ACTION**

**STIPULATION AND NOTICE OF  
DISMISSAL**

Pursuant to Federal Rule of Civil Procedure, Rule 41(a)(1)(A)(ii) Kimberly S. Sethavanish (“Plaintiff”) and Balance Bar Company (“Defendant”) file the foregoing stipulation and notice of dismissal of Plaintiff’s action, which is effective upon filing and does not require the Court’s approval. *See* Fed. R. Civ. P. 41(a)(1)(A)(ii); *see also*, *Garber v. Chicago Mercantile Exch.*, 570 F.3d 1361, 1366 (Fed. Cir. 2009) (action terminated upon filing of stipulation for dismissal without execution of unnecessary proposed order). Despite the automatic nature of this dismissal, it is also appropriate because of a combination of the following: (1) Defendant changed its packaging after the filing of this lawsuit to remove the challenged “All Natural” claim from each of the products at issue in this action and no longer sells any energy bar products containing any of the ingredients identified in Plaintiff’s Second Amended Complaint using the term “All Natural,” mooted Plaintiff’s requested injunctive relief; (2) the Ninth Circuit decision in *Mazza v. American Honda Motor Co., Inc.*, 666 F.3d 581 (9th Cir. 2012)(en banc review denied March 16, 2012) makes certification of a nationwide class action under certain state law claims more difficult and costly; and (3) sales data produced by Defendant shows the likelihood that less than one-third of the products sold could ultimately be part of any certified class.

The confluence of these circumstances make it likely that the damages Plaintiff might be able to obtain on behalf of herself and any certified class would ultimately be less than the \$5 million, the jurisdictional minimum required to maintain an action in federal court under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). Therefore, rather than expend the resources of the parties and this Court when one of the primary objectives of this case has been satisfied and the remaining potential damage claim is unlikely to meet the minimum jurisdictional requirement, Plaintiff has decided at this early stage of the proceedings to voluntarily dismiss her claims with prejudice and has entered a stipulation with Defendant for the purpose of accomplishing that dismissal.

Dated: November 20, 2012

BRAUN LAW GROUP, P.C.

By:                     /s/                      
Michael D. Braun

Attorneys for Plaintiff  
KIMBERLY S. SETHAVANISH

1 Dated: November 20, 2012

ORRICK, HERRINGTON & SUTCLIFFE LLP

2 By: \_\_\_\_\_/s/\_\_\_\_\_  
3 Norman C. Hile

4 Attorneys for Defendant  
5 BALANCE BAR COMPANY  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28